

## R E M A R K S

In response to Applicant's argument in Amendment "A" that the rationale<sup>1</sup> supporting the §103 rejection of the claims is derived solely from Applicant's own specification, the present Office Action asserts at page 6 that "it is notoriously well known in the art that open-celled foams are absorbent and that exposing such open cells on a surface would allow enhanced attachment/absorption of any drywall, paint, adhesive, etc." and that "it would be well within the knowledge of the ordinary skilled artisan to remove a layer of the cellular polymer to expose or open the cells on the surface thereof so that the material of the expansive surface of the flange would be absorbent and could attach/absorb drywell, paint, adhesive or other 'wet' material to be applied to the surface." As stated in MPEP §2144.03, reliance on common knowledge in the art or "well known" is only appropriate in limited circumstances and should only be taken "where the facts asserted to be well known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known", and furthermore that "it would not be appropriate for the Examiner to take official notice of the facts without citing prior art references were the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well known" and further that "it is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." In this case, the alleged "common knowledge" is not "capable of

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<sup>1</sup> that the modification be made "in order for the open cells of the expansive surface to better absorb and adhere drywall that is to be applied onto the expansive surfaces".

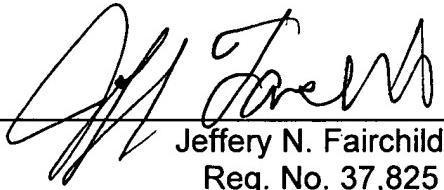
instant and unquestionable demonstration as being well-known", and is "the principal evidence upon which the rejection is based". In short, without the assertion of "common knowledge", the rejection fails. Accordingly, the reliance on "common knowledge" is inappropriate in this case and the rejection should be withdrawn. In any event, the Applicant expressly requests that the Examiner "support the finding with adequate evidence" as required under MPEP §2144.03, C. if the rejection is maintained.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejections and allowance of the case.

Respectfully submitted,

WOOD, PHILLIPS, KATZ,  
CLARK & MORTIMER

By



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